IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE A.GOPAL REDDY
WRIT PETITION NO : 16420 of 2004

Between:

Krishna District Stone Crusher Owners & Quarry Contractors Association, Registered under the Societies Registration Act being Regd.No.99/87 rep., by its Secretary, Sri Ch.Nageswara Rao, s/o Suraiah, r/o Guntupalli Village, Ibrahimpatnam Mandal, Krishna District.

..... PETITIONER

AND

1 The Government of India, Ministry of Road Transport and National Highway Department, rep., by its Secretary, New Delhi.
2 The National Highways Authority of India, rep., by its Chairman, New Delhi.
3 Director General (Road Development) & Special Secretary, Ministry of Road Transport and National Highway Department, New Delhi.
4 M/s.Swarna Tollway Private Ltd., rep., by its Director Plot No.85, Road No.72, Prashasan Nagar, Jubilee Hills, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the public notice dt.9-9-2004 issued by the 4th respondent i.e., Swarna Tollway Private Ltd., published in Eenadu Newspaper dt.11-9-2004 for NH-9 from 217 km. to 265 km., between Nandigama and Vijayawada by the respondents through and under the authority of first respondent and fixing the

toll fee at Rs.0.40 paise per km. in case of Car, Van or Jeep and Rs.1.40 paise per km. in case of Trucks and Bus and Rs.3.00 paise per km. in case of heavy vehicles and equipment as arbitrary, illegal and unconstitutional, inter alia violative of Articles 14, 16 and 21 of the Constitution of India, National Highways Act, 1956, the National High Ways (Rate/Fee) Rules, 1997, and National Highways Act etc., and consequently set aside the public notice dt.9-9-2004 and direct the respondents to reexamine the same and fix the toll fee again in accordance with law and wholesale price index in accordance with the national Highway (Rate of Fee) Rules 1997 and reduce the toll fee and collect the same only after completing the highway.

Counsel for the Petitioner: SMT.G.JYOTHI KIRAN

Counsel for Respondents 1 & 3: MR.ARAJASHEKAR REDDY

(SC FOR CENTRAL GOVERNMENT)

Counsel for Respondent No.2: Mr. S.S. Varma

Counsel for Respondent No.4: ---

The Court at the admission stage made the following :

ORDER:

Heard learned counsel for the petitioners and learned Standing Counsel for respondents. Both have no objection for disposal of the writ petition at the admission stage.

Public notice dated 9-9-2004 issued by the fourth respondent stating that the toll tax as notified in the newspapers on 21-6-2004 will be effective from 12-9-2004 onwards, is challenged on two grounds, namely, the concessionor is entitled to collect the user charges, provided that the same is notified within 10 days prior to the commencement and unless such notification is issued, the fourth respondent is not entitled to collect the same. Secondly, the fourth respondent has not completed the development of National Highway in all respects in accordance with the agreement. In view of the same, the respondents are not entitled to collect the user charges.

Learned counsel for the petitioner has drawn the attention

of this court to Clause 6 of the notification dated 28-4-2004 and contends that unless the tax to be collected from the road users has been notified in the local news papers at least 10 days before the tax due date of collection, the fourth respondent, who is the Agent of the concessionor cannot collect the user charges as notified. The second respondent on publication of the notification earlier refrained the fourth respondent from collecting the toll tax, as the development of the National Highway is not completed. In view of the same, the fourth respondent is not entitled to collect the same.

I see no force in the submission made by the learned counsel for the petitioner that unless a notification is issued prior to such intention to collect the user charges, the concessionor cannot collect the user charges. As per the notification issued by the Government of India, dated 28-4-2004 the concessionor was permitted to collect the user charges from 1st July, 2004 onwards, provided that the said notification is published by the concessioner in two newspapers. As per Clause 6 of the notification, the notification has to be published at least 10 days prior to the due date of collection. Once the notification is published on 21-6-2004 the fourth respondent, who is the Agent to the concessionor is entitled to collect the said tax on expiry of 10 days. Since for one reason or the other, the concessionor has been prevented from collecting the user charges even though the notification was published on 21-6-2004 and he is collecting the tax after the impugned notice. Further, the second respondent has not permitted the concessionor to collect the user charges from 1-7-2004 unless he completed the development of the National Highway and only after completion of the development

the present notice was issued by the fourth respondent specifying the date that he is entitled to collect the tax. In view of the same, I see no infirmity in the notice issued by the fourth respondent. Moreover, the petitioner has not impleaded the concessioner CIDB Ventures, SDNBHO, Kaulalampur, Malaysia in whose favour the contract was awarded. In the absence of the concessioner-company, the fourth respondent cannot be prevented from collecting the toll tax, when the contract entered by it with respondents 1 and 2, exists.

Accordingly the Writ Petition is dismissed. No costs.

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A. Gopal Reddy, J.

16th September, 2004.
Js.

ASSISTANT REGISTRAR

To

1 The Secretary, Government of India, Ministry of Road Transport and National Highway Department, New Delhi.
2 The Chairman, National Highways Authority of India, New Delhi.
3 Director General (Road Development) & Special Secretary, Ministry of Road Transport and National Highway Department, New Delhi.
4 The Director, M/s.Swarna Tollway Private Ltd., Plot No.85, Road No.72, Prashasan Nagar, Jubilee Hills, Hyderabad.
5 2 CD copies.